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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281-0369-02]

RIN 0648-XC273

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; 2012-2013 Accountability Measure and Closure for Gulf King Mackerel in Northern Florida West Coast Subzone

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements an accountability measure (AM) for commercial king mackerel in the northern Florida west coast subzone of the eastern zone of the Gulf of Mexico (Gulf) exclusive economic zone (EEZ) through this temporary final rule. NMFS has determined that the commercial annual catch limit (ACL) (equal to the commercial quota) for king mackerel in the northern Florida west coast subzone of the Gulf EEZ will have been reached by October 5, 2012. Therefore, NMFS closes the northern Florida west coast subzone to commercial king mackerel fishing in the EEZ. This closure is necessary to protect the Gulf king mackerel resource.

DATES: The closure is effective noon, local time, October 5, 2012, until 12:01 a.m., local time, on July 1, 2013.

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SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, and cobia) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On April 27, 2000, NMFS implemented the final rule (65 FR 16336, March 28, 2000) that divided the Gulf migratory group king mackerel's Florida west coast subzone of the Gulf eastern zone into northern and southern subzones, and established their separate quotas. The Florida west coast subzone is that part of the eastern zone located south and west of 25°20.4' N. lat. (a line directly east from the Miami-Dade/Monroe County, FL boundary) along the west coast of Florida to 87°31.1' W. long. (a line directly south from the Alabama/Florida boundary). The Florida west coast subzone is further divided into northern and

southern subzones. The northern subzone is that part of the Florida west coast subzone that is between 26°19.8' N. lat. (a line directly west from the Lee/Collier County, FL boundary) and 87°31.1' W. long. (a line directly south from the Alabama/Florida boundary).

The commercial ACL (commercial quota) for the Gulf migratory group king mackerel in the northern Florida west coast subzone is 197,064 lb (89,397 kg) (50 CFR 622.42(c)(1)(i)(A)(2)(ii)), for the current fishing year, July 1, 2012, through June 30, 2013.

Because 75 percent of the northern Florida west coast subzone's quota had been harvested, NMFS published a temporary rule on August 30, 2012, to reduce the trip limit for the commercial sector of king mackerel in the northern Florida west coast subzone to 500 lb (227 kg) of king mackerel per day in or from the EEZ (77 FR 52623).

Regulations at 50 CFR 622.49(h)(1)(i) and 50 CFR 622.43(a)(3) require NMFS to close the commercial sector for Gulf migratory group king mackerel in the northern Florida west coast subzone when the ACL (quota) is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. Based on the best scientific information available, NMFS has determined the commercial ACL

(commercial quota) of 197,064 lb (89,397 kg) for Gulf migratory group king mackerel in the northern Florida west coast subzone will be reached by October 5, 2012. Accordingly, the northern Florida west coast subzone is closed effective noon, local time, October 5, 2012, through June 30, 2013, the end of the fishing year, to commercial fishing for Gulf migratory group king mackerel.

Except for a person aboard a charter vessel or headboat, during the closure, no person aboard a vessel for which a commercial permit for king mackerel has been issued may fish for or retain Gulf group king mackerel in the EEZ in the closed zones or subzones. A person aboard a vessel that has a valid charter vessel/headboat permit for coastal migratory pelagic fish may continue to retain king mackerel in or from the closed zones or subzones under the bag and possession limits set forth in 50 CFR 622.39(c)(1)(ii) and (c)(2), provided the vessel is operating as a charter vessel or headboat. A charter vessel or headboat that also has a commercial king mackerel permit is considered to be operating as a charter vessel or headboat when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

During the closure, king mackerel from the closed zone, including those harvested under the bag and possession limits,

may not be purchased or sold. This prohibition does not apply to trade in king mackerel from the closed zones or subzones that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor.

Classification

This action responds to the best scientific information available. The Assistant Administrator for Fisheries, NOAA (AA), finds that the need to immediately implement this action to close the Florida west coast subzone to commercial king mackerel fishing constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b) (B) because prior notice and opportunity for public comment is unnecessary and contrary to the public interest. Prior notice and public comment is unnecessary because the rule implementing the commercial ACL (commercial quota) and the associated requirement for closure of the commercial harvest when the ACL (quota) is reached or projected to be reached has already been subject to notice and comment, and all that remains is to notify the public of the closure.

Additionally, allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the king

mackerel resource because the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 et seq.

Dated: October 2, 2012

Lindsay Fullenkamp,
Acting Deputy Director,
Office of Sustainable Fisheries, National
Marine Fisheries Service.

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